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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1998

Addendum

PORTUGAL*

[2 February 1999]

* The initial report submitted by the Government of Portugal is contained in document CAT/C/9/Add.15; for its consideration by the Committee, see documents CAT/C/SR.166 and 167 and Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/49/44, paras. 106-117). The second periodic report of Portugal is contained in document CAT/C/25/Add.10; for its consideration by the Committee see documents CAT/C/SR.305, 306 and 308 and Official Records of the General Assembly, fifty-third session, Supplement No. 44 (A/53/44, paras. 70-79).

CONTENTS

		Paragraphs	Page
Introduction		1 - 5	3
I.	GENERAL LEGAL FRAMEWORK	6 - 26	3
II.	INFORMATION ON EACH OF THE ARTICLES IN PART I OF THE CONVENTION	27 - 234	8
	Article 1	27 - 32	8
	Article 2	33 - 97	9
	Article 3	98 - 116	20
	Article 4	117 - 118	24
	Article 5	119 - 120	24
	Article 6	121 - 138	24
	Article 7	139 - 141	27
	Article 8	142 - 144	27
	Article 9	145 - 146	28
	Article 10	147 - 158	28
	Article 11	159 - 196	29
	Article 12	197 - 202	34
	Article 13	203 - 219	37
	Article 14	220 - 227	38
	Article 15	228 - 231	40
	Article 16	232 - 234	40

Introduction

1. Portugal signed the Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment on 4 February 1985. The Convention entered into force for Portugal on 11 March 1989, after its ratification by the Assembly of the Republic in resolution No. 11/88 of 1 March 1988.

2. The initial report of Portugal to the Committee against Torture covered the period between 11 March 1989 and 31 March 1992 and was submitted in conformity with the provisions of article 19, paragraph 1, of the Convention.

3. The second periodic report submitted by Portugal covered the period between 31 March 1992 and 31 March 1996.

4. The present report covers the period between 31 March 1996 and 28 February 1998. It follows the guidelines adopted by the Committee against Torture at its 85th meeting. The observations and recommendations made by the Committee on the occasion of the discussion of the second periodic report of Portugal (see CAT/C/SR.308) have also been taken into account in its preparation.

5. The present report has the same general framework as the second periodic report, so as to facilitate understanding and enable comparison of the updated data presented in the two reports.

I. GENERAL LEGAL FRAMEWORK*

6. A number of legislative changes have occurred in the general domestic legal framework.

7. Constitutional Act No. 1/97 of 20 September 1997 brought about the fourth revision of the Constitution of the Portuguese Republic .

8. The revision envisages two major alterations which are relevant to the present report. The first concerns the principles of extradition provided for in article 33 of the Portuguese Constitution, which now reads as follows:

> "1. Portuguese citizens shall not be deported from the national territory.
>
> 2. Deportation of persons who have entered, or are permanently resident in, the national territory, who have obtained a residence permit, or who have lodged an application for asylum that has not been refused, shall be determined by a judicial authority only; the law shall provide for the expeditious decision of these matters.

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* The 76 legal texts in Portuguese which were provided with the report may be consulted in the archives of the Office of the United Nations High Commissioner for Human Rights.

3. The extradition of Portuguese citizens from the national territory shall only be permitted, on condition of reciprocity based on an international agreement, in cases of terrorism and international organized crime and provided that the legal order of the requesting State enshrines safeguards of a fair and just trial.

4. No one shall be extradited for political reasons nor for crimes which, under the law of the requesting State, carry the death penalty or any other penalty causing irreversible damage to the physical integrity of the person.

5. Extradition in respect of offences punishable, under the law of the requesting State, by deprivation of liberty or detention order for life or an indeterminate term, shall only be permitted on condition of reciprocity based on an international agreement and provided that the requesting State gives an assurance that such sentence or detention order will not be imposed or enforced.

6. Extradition shall be determined by a judicial authority only.

7. The right of asylum is guaranteed to aliens and stateless persons who are persecuted, or under a serious threat of persecution, in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples, or the liberty or human rights of individuals.

8. The status of political refugees shall be established by law."

9. As amended, article 33, paragraph 4, now expressly prohibits the extradition of persons for crimes which under the law of the requesting State are liable to a penalty causing irreversible damage to the physical integrity of the person.

10. The extradition of Portuguese citizens from the national territory is now envisioned, on condition of reciprocity based on an international agreement, in cases of terrorism and international organized crime, provided that the legal order of the requesting State enshrines safeguards for a fair and just trial.

11. Extradition for crimes which, under the law of the requesting State, are punishable by deprivation of liberty or detention order for life or an indeterminate term shall only be permitted on condition of reciprocity based on an international agreement and provided that the requesting State gives an assurance that such sentence or detention order will not be imposed or enforced.

12. Article 32, paragraph 6, of the Portuguese Constitution now provides for the possibility that, in certain cases and with due regard for the right of defence, the personal appearance of the person charged with or accused of an offence can be dispensed with in the procedural acts, including the trial, as

long as the respective declarations of identity and residence have been duly made by the defendant and he is informed of the existence of proceedings against him.

13. In addition, the Criminal Code 1/ which underwent a first revision in 1995, is currently in the final stages of a second revision.

14. In the areas relevant to this report, the reforms introduced by the new bill are rather significant and involve stricter penalties for several crimes against persons, as well as the reinforcement of the legally protected right of sexual freedom, in the case of sexual crimes.

15. Regarding murder, three new aggravating circumstances have been added: crimes committed against particularly defenceless victims, by a public official exercising serious abuse of authority or through particularly dangerous means. The increased criminal liability under these circumstances extends to crimes against physical integrity, liberty and honour. The use of particularly dangerous means is common to offences against the physical integrity of persons.

16. A procedural modification was introduced in terms of ill-treatment of a spouse, or other person living with the perpetrator under similar circumstances. This modification renders punishable with a sentence of from one to five years' imprisonment physical or psychological abuse of a spouse or any other person who co-habitates with the offender under conditions similar to those of a spouse.

17. Violation of the rules governing safety at work is also rendered criminal.

18. Addressing the issue of humanizing sentences, the revision gives predominance to the application of alternative sentences to short-term imprisonment. As such, and based on the same principles, the Bill proposes amendments to the articles regarding the maximum limits for relatively indeterminate sentences, now set at a total maximum of 25 years, as opposed to the previous system which did not determine any such maximum limit in these cases.

19. The proposed Bill on the Revision of the Code of Criminal Procedure, 2/ approved by the Council of Ministers on 4 December 1997, confers unity and rationality upon the process, by clarifying the roles of the judicial authorities and police bodies and by reinforcing the effectiveness of the system and the protection of fundamental rights. The prospective Code of Penal Procedure attempts to conciliate efficiently the conflicting objectives of security and the protection of fundamental rights.

20. The new system has two major features, namely an increase in the number of cases in which, as referred to previously, the accused may be tried in absentia provided that he has been duly notified of the proceedings initiated against him, and procedural differentiation between minor or medium offences on the one hand and grave crimes on the other, through mechanisms of procedural simplification and the establishment of a new abbreviated process. The systems of summary proceedings, proceedings and application for civil

indemnity have all been altered. The possibility has been introduced for the court to award, with the effect of criminal conviction, damages for losses suffered, when special considerations so require for the protection of the victim. In terms of in camera proceedings, certain changes have been introduced which render the system more flexible. Changes have also been made in the area of resources, with the aim of evaluating the available means and using them more effectively.

21. It is important to recall Law No. 20/96 of 6 July, which allows immigrant community, anti-racist and human rights organizations to participate in criminal proceedings without a request from the victim when the offence on trial involves racist, xenophobic or discriminatory conduct, unless the victim is expressly opposed to this participation.

22. Of particular note is the reform of the prison system under which several legislative measures have been adopted which are likely to contribute to the improvement of the conditions of detention in prison establishments. The legislative initiatives referred to above are part of the Programme of Action for the Prison System, approved through Council of Ministers resolution No. 62/96 of 29 April. The principal features of this programme of action will be discussed below in greater detail, under article 11.

23. In terms of international law, several new multilateral international instruments were ratified in areas which are relevant to the prevention and punishment of torture, namely:

Europol Convention, creating a European Police Force designed to combat the more violent forms of crime, ratified by the Assembly of the Republic in resolution No. 64/97, of 3 July, published in the Official Journal No. 217, series I-A, of 19 September;

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, ratified by Presidential Decree No. 1/97, published in the Official Journal, series I of 13 January;

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, open for signature on 13 January 1993, approved for ratification by the Assembly of the Republic in resolution No. 25-A/96, published in the Official Journal No. 169 series I-A, 23 July supplement;

Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms, of 6 November 1990, published in the Official Journal No. 55, series I-A, 7 March 1994, ratified by Portugal on 12 October 1995, which came into effect on 1 February 1998, as per Notice No. 6/96, published in the Official Journal, series I of 2 January;

Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established thereby and respective annex, signed in Strasbourg on 11 May 1994,

approved for ratification by the Assembly of the Republic in resolution No. 21/97, published in the Official Journal No. 102, series I-A of 3 May 1997;

Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, open for signature in Strasbourg on 4 November 1993, approved for ratification by the Assembly of the Republic in Resolution No. 24/97, published in the Official Journal No. 103, series I-A, of 5 May 1997;

Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment open for signature in Strasbourg on 4 November 1993, approved for ratification by the Assembly of the Republic in resolution No. 19/97, published in the Official Journal No. 100, series I-A , of 30 April 1997.

24. In addition, the following instruments on mutual international judicial assistance in criminal matters are already in force for Portugal:

European Convention on Extradition, as of 25 April 1990;

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as of 29 December 1992;

European Convention on the Transfer of Sentenced Persons, as of 1 October 1993;

European Convention on Mutual Assistance in Criminal Matters, as of 26 December 1994;

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, as of 17 February 1995;

Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, as of 27 April 1995;

Convention of the Member States of the European Communities on the implementation of the principle non bis in idem, as of 1 January 1996. 3/

25. The following Conventions are still not in force, although they have already been ratified by Portugal:

Agreement between the Member States of the European Communities on the Simplification and Modernization of Methods of Transmitting Extradition Requests, signed in Brussels on 10 March 1995, ratified by Presidential Decree No. 41/97, of 22 May, published in the Official Journal No. 138, series I-A, 18 June;

European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, ratified by Presidential Decree No. 73/97, of 27 November, published in Official Journal No. 287, Series I-A of 13 December.

26. Portugal's commitment in the combat against torture is also reaffirmed at the more restricted regional level, as in the Council of Europe. As such, Portugal has been a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since 29 March 1990. It is important to note that the Committee for the Prevention of Torture, instituted under this convention of the Council of Europe, has already undertaken two regular visits to Portugal (January 1992 and May 1995), following which the Government authorized the publication of the respective reports together with its own observations. There was an additional extraordinary visit in 1995, for the purpose of analysing specific aspects of previous recommendations of the Committee regarding one particular prison establishment.

II. INFORMATION ON EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 1

Definition of torture

27. The legal definition of torture is laid down in article 243, paragraph 3, of the Criminal Code, according to which torture, or cruel, degrading or inhuman treatment are defined as "acts inflicting intense physical or psychological suffering or severe physical or psychological fatigue or involving the use of chemical substances, drugs or other natural or artificial means, intended to impair the victim's ability to make decisions or freely express his will".

28. Article 244 of the Code stipulates:

> "1. Under the terms and conditions mentioned in the preceding article, 4/ whosoever,
>
> (a) Causes serious physical injury to another;
>
> (b) Uses particularly harsh means and methods of torture, such as physical abuse, electric shocks, mock executions or hallucinogenic substances; or
>
> (c) Habitually commits the acts mentioned in the preceding article;
>
> shall be liable to a penalty of from 3 to 12 years' imprisonment.
>
> 2. When the acts described in this or the previous article lead to the victim's suicide or death, the person responsible shall be liable to a penalty of from 8 to 16 years' imprisonment."

29. The use of torture is also an aggravating circumstance in other crimes referred to in the Criminal Code. As such, the sentences applicable to the crimes of murder (art. 132, para. 2) and serious physical offences (art. 144), for example, are heavier in cases where torture is involved.

30. In addition, the above-mentioned offences are public crimes and therefore liable to the initiation of ex officio proceedings by the Public Prosecutor, in accordance with the legal principle in effect in Portugal which determines that this procedure is mandatory.

31. These crimes are imputable to the author, as well as to co-principals and to members of associations or criminal organizations, the object of which is the practice of these criminal activities. Attempt, in these crimes is always punishable. In its subjective structure, these crimes, envisage both law enforcement officials and private citizens.

32. In accordance with Portuguese law, international law is considered to be infraconstitutional but supralegal. As such, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is considered as having been incorporated into Portuguese law upon its entry into force for Portugal. Pursuant to article 8, paragraph 2, of the Portuguese Constitution, "The rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication, so long as they remain internationally binding with respect to the Portuguese State." As such and in terms of the full incorporation of the present Convention in Portuguese domestic law, the latter was previously approved by the Assembly of the Republic and later ratified by the President of the Republic.

Article 2

Legislative, administrative, judicial and other measures

33. For information regarding the legislative, administrative and judicial measures adopted in Portugal to combat torture, the reader is referred to paragraphs 50 to 116 of the initial report (CAT/C/9/Add.15) and to paragraphs 19 to 24 of the second periodic report (CAT/C/25/Add.10).

34. Bearing in mind this general framework, a few additional measures adopted by Portugal in the following areas are discussed below:

(a) Organization of the permanent courts and other measures of judicial organization;

(b) Police measures;

(c) Protection of the victims of violent crimes;

(d) Child victims of violence;

(e) Physician's Code of Ethics;

(f) Reorganization of the medical legal system;

(g) The medical profession and Legis Artis;

(h) Removal of organs from dead or living persons;

(i) National Ethics Council and local ethics commissions;

(j) Mental Health Law.

35. Article 18, paragraph 1, of the Portuguese Constitution stipulates that the Constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable to and binding on public and private bodies.

36. The Constitution establishes the right to life and physical integrity of the person, as a fundamental and inviolable right and, as such, article 19, paragraph 6, of the Constitution stipulates that the declaration of a state of siege or a state of emergency shall under no circumstances affect the right to life and physical integrity.

Organization of the permanent courts and other measures of judicial organization

37. Law No. 44/96, of 3 September, establishes a rota system of 50 courts, designed to address issues of an urgent nature during weekends and national holidays. An example of these urgent issues is the presentation of every detainee before an examining magistrate within a maximum period of 48 hours following detention, in accordance with article 28, paragraph 1, of the Portuguese Constitution and article 141 of the Portuguese Criminal Code. The detainee must be brought before the examining magistrate even if the arrest does not take place in flagrante delicto, but as a consequence of an arrest warrant previously issued by a judge. This understanding was expressly articulated in the revision to the Code of Criminal Procedure (art. 254, para. 2).

38. The revisions to the Public Prosecutor Act, (Bill No. 113/VII 5/ of the Assembly of the Republic) and the Organic Law of the Judicial Courts (Bill No. 182/VII, of the Assembly of the Republic) are at present in the final stages of conclusion. These changes fall within the general framework of reinforcement of the institutions devoted to the administration of criminal justice.

39. Law No. 1/97, of 16 January, establishes a technical advisory nucleus within the Office of the Attorney General aimed at providing technical consultancy services to the Department of Justice in the areas of economics, finance, banking, accounting and the movables market.

40. The revision of the Organization Act governing the Centre for Judicial Studies (Bill No. 139/VII 6/ of the Assembly of the Republic) is also in its final stages. This law is aimed at improving upon the experiences obtained during the last 15 years of the Centre's activity.

41. Law No. 289/97, of 22 October, establishes the Criminal Affairs Council, the supreme consultative body of the Ministry of Justice, the National Institute of Criminology thereby becoming defunct.

Police measures

42. Paragraphs 1 and 2 of article 27 7/ of the Constitution of the Portuguese Republic stipulate that no one shall be deprived of his or her liberty, in whole or in part, except as a result of a criminal sentence imposed by a court as a conviction for an offence punishable by imprisonment, or as the consequence of a judicially ordered security measure. Paragraph 3 stipulates the situations under which a citizen may be deprived of those rights and paragraph 4 the minimum guarantees surrounding such deprivation.

43. These principles are reflected in the Organization Acts of the main police forces established by Portuguese legislation: the Judicial Police, the Public Security Police and the National Republican Guard.

44. The Public Security Police and the National Republican Guard come under the Ministry of the Interior, whilst the Judicial Police come under the Ministry of Justice.

45. The Public Security Police Organization Act, was adopted by Decree-Law No. 321/94, of 29 December. This Act includes a list of specific cases in which coercive measures may be used. For further information we refer the reader to paragraph 35 of the second periodic report (CAT/C/25/Add.10). Decree-Law No. 2-A/96, of 13 January, has altered the rules governing the appointment of the Commander General of this police force, so as to bring them into closer alignment with the European model governing the appointment of the supreme commanders of similar police forces. As such, "The Commander General of the Public Security Police is nominated by the Minister of the Interior and must be a General in the army, a police officer of rank not lower than that of Chief Superintendent, a member of the Public Prosecutor's Office, or other person of recognized high moral standing."

46. Under conditions similar to those of the Public Security Police, the Organization Act of the National Republican Guard, adopted by Decree-Law No. 265/93, of 31 July, defines in article 30, the situations in which coercive measures may be utilized. For further information we refer the reader to paragraph 37 of the second periodic report (CAT/C/25/Add.10).

47. The Judicial Police is a criminal police body organized hierarchically under the Ministry of Justice and overseen by the Public Prosecutor's Office, which supervises its procedural activity. The functions of this police body are to prevent and investigate crimes and to work in cooperation with the judicial authorities.

48. Decree-Law No. 295-A/90, of 21 September, establishing the organizational regime governing the Judicial Police, stipulates, in paragraph 1 (b) of article 91, the special duty incumbent on the police forces to refrain from inflicting torture, or inhuman, cruel or degrading punishment or treatment, as well as to refuse to execute, or if necessary to disregard any orders or instructions to apply such treatment, as well as to refrain from the use of force beyond that which is strictly necessary for the performance of a task that is required or authorized by law.

49. The Inspectorate-General (Inspecção-Geral da Administração Interna), is a high-level inspection and prosecution service within the Ministry of the Interior, established by Decree-Law No. 227/95, of 11 September, the main function of which is to monitor and supervise the legality of the activities of the police forces. The Inspectorate-General, headed by a Deputy Attorney-General, is a service whose primary role is to monitor legality, protect citizens' rights and achieve more effective and prompt administration of disciplinary measures.

50. As reported in the media, the conclusions of the 1997 report issued by the Inspectorate-General emphasize an improvement in respect by police officers for citizens' rights, as reaffirmed in a public statement by the Minister of the Interior, who highlighted the fact that the Inspectorate-General contributes "to a better protection of the citizens and defence of their rights, as well as the dignification of the security forces and improvement of their work conditions".

51. The report further highlights a reduction in cases of alleged physical abuse by members of the police forces, a situation which gave rise to 34 complaints in the first 10 months of 1996 and 22 in 1997, a downward trend which also applies to 1998.

52. On the other hand, in 1997 over 100 detention areas in police stations and quarters were closed down, in addition to 18 Republican National Guard quarters and 3 Public Security Police stations, as a result of inspections carried out by the Directorate-General who classified them as inadequate detention facilities. A noteworthy example is that of the prison cells of the Lisbon Governo Civil 8/ the conditions of which were condemned by the Committee for the Prevention of Torture, following a visit there, as well as by the Inspector-General. As a result, the cells were renovated, namely through the opening of new windows and the creation of special cells for inmates with children, decorated with children's motifs.

53. For further information on these issues, the reader is referred to paragraphs 27 to 44 of the second periodic report (CAT/C/25/Add.10).

Protection of victims of violent crime

54. As already stated in paragraphs 45 to 50 of the second periodic report (CAT/C/25/Add.10), Decree-Law No. 423/91, of 30 October, amended by Law No. 10/96, of 23 March, establishes a legal regime for the protection of victims of violent crime. Articles 129 and 130 of the Criminal Code stipulate the civil liability deriving from a crime, and the compensation of the injured party is provided for in special legislation.

55. Under Decree-Law No. 423/91 of 30 October, Regulatory Decree No. 4/93 of 22 February and Law No. 10/96 of 23 March, the Minister of Justice is responsible for the decision to award compensation to the victims of violent crimes, upon the advice, as to the merits of the award and the amount to be awarded, of the Fact Finding Commission for the Award of Compensation to Victims of Violent Crimes, a body set up to consider and analyse these specific requests.

56. The Commission is composed of a judge appointed by the Supreme Council of the Judiciary, a lawyer appointed by the Bar Association and a senior official of the Ministry of Justice, appointed by the Minister.

57. The following data provided by the Fact Finding Commission for the Award of Compensation to Victims of Violent Crime reflect the activities of the Commission relative to 1996. 9/

1996 Statistics

Proceedings	
Proceedings carried over from 1995	52
Proceedings filed	59
Proceedings with final opinion by the Commission	58
Finalized proceedings 10/	42
Proceedings carried over to 1997	69
Proceedings filed	
In 1993	62
In 1994	52
In 1995	42
In 1996	59
In 1997 11/	88

58: The Commission's 1996 annual report highlights the need to review certain issues, so as to enable the Commission to pursue its future activities adequately: lack of knowledge by the interested parties of the workings of the Commission; the need to amend certain aspects of Decree Law No. 423/91, of 30 October.

59. Relative to the second issue, the Commission took the initiative of drafting a proposal for legislative change, which accompanied the above-mentioned report. The Commission also expressed its availability to discuss the proposed changes, as well as any others relevant related to this issue, offering its experience and knowledge of practical cases, as a contribution to the improvement of the law.

60. The Commission's annual report further states that, in accordance with the 1994 justice statistics, there were 1,723 crimes susceptible to create victims who qualify as petitioners for State compensation. This statistic involves only the crimes of murder, manslaughter, abduction and sequester. Even considering that 50 per cent of the victims of these crimes did not

fulfil the prerequisites established by Decree-Law No. 423/91, 800 requests for compensation should have been filed with the Commission, instead of the 213 filed since 1993.

61. Law No. 61/91 of 13 August, establishes the special protection awarded to women victims of violence, namely through the setting up of a prevention and support network, an SOS office aimed at providing a telephone helpline and the creation of departments within the criminal police bodies staffed by female agents.

62. It is important to stress that the European Convention on the Compensation of Victims of Violent Crimes was signed by Portugal on 6 March 1997 and entered into force on 1 February 1998.

63. Among the private associations, the Portuguese Association for the Support of Victims (APAV), is a private social welfare agency, aimed at providing moral, social, legal, psychological and economic support to victims of general criminal offences.

64. A new section of APAV was recently established in Faro, adding to the 10 already existent throughout the country, namely in Lisbon (2), Cascais, Loures, Setúbal, Porto, Vila do Conde, Braga, Vila Real and Coimbra. The Faro section has already attended to over 50 cases in the first three months of activity. The section is functioning in quarters ceded by the Judicial Police and is composed of a multidisciplinary team of 20 professionals ranging from psychologists and lawyers, to nurses, social workers and teachers, all working on a voluntary basis. Eighty-five per cent of the victims who seek the support of this office are women.

65. Measures aimed at the protection of victims have also been adopted within a framework of safeguarding equality of opportunities. In this regard, Portugal has undertaken two initiatives recently:

(a) The establishment of the Office of the High Commissioner for Matters relating to the Promotion of Equality and the Family, by Decree-Law No. 3-B/96 of 26 January 1996. An example of the role of the High Commissioner is the recent establishment of a safe house for battered women, in a joint venture with the Municipality of Alverca, following a proposal made by that office to the country's 12 women mayors regarding the joint setting up of this kind of unit;

(b) The adoption on 24 March 1997, of a Global Plan for Equality of Opportunities. This plan envisages not only the Government's objectives in terms of the policies of equality of opportunities between men and women, but also the commitments espoused by the Platform for Action of the United Nations Fourth World Conference on Women, stressing the importance of those policies in terms of sustained economic development, social development and the promotion of democracy. The Global Plan espouses six objectives and attributes the global coordination of the project to the High Commissioner for Matters relating to the Promotion of Equality and the Family. A year after its publication in the Official Journal, the Global Plan will be subject to evaluation, relative to the application of the measures contained therein.

66. In the area of prevention, the following measures have been adopted:

Public awareness campaigns regarding the role of women in society;

The elaboration and distribution of a guide containing practical information on the rights of women victims of violence.

67. The following protective measures are worthy of mention:

Establishment of shelters for women victims of violence;

Establishment of an emergency telephone hotline;

Establishment in the relevant criminal police bodies, of reception areas for women victims of violent crimes;

Establishment of procedures designed to overcome the gap between the filing of a complaint by a victim of family violence and the issue of a restraining order against the person living with the victim if this is deemed convenient by the court;

Promotion and reinforcement of measures aimed at the compensation of victims of family violence;

Introduction in courses designed for police officials of matters relating to the psychological and social effects of family violence on the victims and on the family structure;

Promotion of measures aimed at the suppression of the exploitation of the prostitution of others and traffic in women, through stricter cooperation between the Government and the local authorities;

Establishment of family mediation centres.

68. Besides these, there are specific measures aimed at the protection of women victims of violence, among which are: the legitimacy awarded to women's associations to exercise the right of popular action in defence of the rights of women; the reinforcement of the legal protection of women victims of violence, sexual abuse and ill-treatment by a spouse or person living with the victim under conditions analogous to those of a spouse; and the obligation of the State to compensate the victim, when compensation cannot be paid by the perpetrator or by any other means.

Child victims of violence

69. Relative to the issue of child victims of violence, we refer the reader to paragraphs 52 to 65 and 130 to 145 of the second periodic report (CAT/C/25/Add.10).

70. The draft revision of the Criminal Code introduces a change to article 5, paragraph 1 (b), so as to allow the application of Portuguese criminal law to crimes of child sexual abuse, (arts. 172-173) exploitation of the prostitution of children and the traffic of minors (art. 176), committed

outside the national territory, independently of the nationality of the victim and of the fact that the act is punishable by the legislation of the country where the crime was committed.

71. In terms of child sexual abuse (art. 172), in addition to the already existing laws against the use of children under the age of 14 in pornographic photography, film or recording, the exhibition and trade (namely, the sale) of such materials has also been rendered illegal. The combat against paedophilia is thus reinforced in accordance with the Common Plan of Action adopted in this realm by the European Union.

72. So as to reinforce the protection of child and adolescent victims of sexual crimes and in accordance with the guidelines advanced in the 1996 Stockholm World Congress against the Commercial Exploitation of Children, the sexual exploitation of children under the age of 16 is penalized, independently of the method used, or the situation of abandonment or need of the victim (art. 176, para. 2).

73. The combat against the exploitation of the prostitution of children is also intensified through the penalization of the laundering of profits derived therefrom, in accordance with the amendments to article 2 of Decree-Law No. 325/95 of 24 December, thus espousing recommendation R(91) 11, adopted by the Committee of Ministers of the Council of Europe on 9 September 1991.

74. In terms of the sexual abuse of dependent adolescents, the revision provides for the punishment of an offender for crimes committed against minors aged between 14 and 18 years who have been entrusted to the perpetrator for the purposes of education or care.

75. Although as a rule these are semi-public crimes, they may nevertheless be prosecuted by the Public Prosecutor's Office, independently of the filing of a complaint, whenever special reasons associated with the public interest so demand and the victim is under 12 years of age (art. 178, para. 2). The draft revision introduces an express reference to the best interests of the victim, which are the only interests to be taken into account. The accessory penalty of restriction of parental authority, custody or guardianship, is increased from a maximum period of 5 years to 10 years.

76. In 1996, 1997 and 1998, commissions for the protection of minors were established in the districts of Lourinhã, Fafe, Felgueiras, Entroncamento, Torres Novas, Ponte de Lima, Abrantes, Paredes de Coura, Montijo, Barreiro, Amadora, Cartaxo, Fundão, Soure, Porto de Mós, Figueiró dos Vinhos, Marinha Grande, Ourém, Guarda, Mogadouro, Baião, Albufeira, Lagos and Olhão, and the town councils of Lagoa in the Azores, Sertã, Amares, Mortágua and Carregal do Sal.

77. The Commissions for the Protection of Minors are official non-judicial institutions with functional autonomy, invested with a jurisdiction traditionally exercised by the court, in a process designed to endow the community with greater responsibility.

78. The commissions are involved in the detection, prevention and activity based on the respect for the safeguard of the intimacy of private and family

life, directed at minors under 18 years of age who are victims of abandonment, ill-treatment or other situations which may pose a serious danger to their safety, health, moral upbringing or education and minors under the age of 12 who have committed acts which qualify as crimes or misdemeanours or who are in situations of begging, vagrancy, alcohol abuse, drug abuse or prostitution.

79. In December 1996, the National Commission on the Rights of the Child was created with the objective of ensuring a more accurate evaluation and follow-up of the implementation of the Convention on the Rights of the Child. The Commission, which is dependent on the High Commissioner for Equality and the Family, has recently completed the second periodic report on the implementation of the Convention on the Rights of the Child, which was presented publicly on the International Day of the Child. After the first year of activity, during which the main preoccupation of the Commission was the drafting of the national report, the Commission will direct its activities towards more practical actions regarding the dissemination of its work and the principles espoused by the Convention. The Commission has already undertaken public activities in several parts of the country aimed at informing both children and adults about the Convention.

80. The Child Custody Law, the main provisions of which date back to 1978, is at present being revised. The draft proposal for a child custody law will distinguish between minors victims of abuse and ill-treatment (protective interventional custody) and minors perpetrators of criminal violations (educational interventional custody).

The Physicians' Code of Ethics

81. The Physicians' Code of Ethics was drafted in 1982 by physicians, through the Medical Association, which is a State-approved organization.

82. Article 30 of the Physicians' Code establishes their right of conscientious objection, whereby a physician is entitled to refuse to perform any professional act which obliges him to act in conflict with his moral, religious or humanitarian beliefs.

83. Article 44 of the Physicians' Code provides that any physician who has attended to a child, an elderly or handicapped person and observes that such a person has been abused or subjected to ill-treatment or other acts of cruelty or violence, shall take the appropriate measures for their protection and, in particular, notify the police or competent social authorities.

84. It seems important to expand upon the Physicians' Code of Ethics and to clarify that, in legal terms, the Code comprises a set of norms adopted by this professional group and recognized by the State.

85. These norms constitute the basis of an exclusively disciplinary responsibility on the part of the doctors who infringe them, a responsibility which is established by the relevant body of the medical profession, namely the National Council of Ethics of the Medical Association.

86. The physicians' disciplinary rules are endorsed by Decree-Law No. 217/94, of 20 August. It is important to note that the physician's

disciplinary responsibility coexists with all other forms of responsibility provided for by the law, namely criminal law. For additional information, the reader is referred to paragraphs 76 and 77 of the second periodic report (CAT/C/25/Add.10).

87. Physicians are also liable to criminal responsibility, through the competent judicial bodies, based on provisions of the Criminal Code. In accordance with article 150 of the Criminal Code:

> "Operations and medical treatment which, based on medical knowledge and experience are deemed appropriate and are performed according to the legis artis by a physician or by another legally authorized person, with the intention of preventing, diagnosing, healing or undermining illness, suffering, physical injury or fatigue or mental disturbance, are not considered offences against the physical integrity of the person."

88. The physician who upon treatment of a patient observes that the latter has been the victim of aggression is required to alert the competent authorities and to take the necessary general measures. This does not preclude the victim from opposing the physician's duty to undertake such measures, a situation which the latter will have to ponder based on the specific circumstances of the case, the nature of the injuries, the means used by the aggressor and the consequences of the aggression, in accordance with the general rules regarding conflict of duties.

Reorganization of the medical legal system

89. Decree-Law No. 11/98, of 24 January, reorganized the medical legal system, re-evaluating the system based on acquired experience and introducing structural changes and improvements so as to provide the system with the greater functionality and flexibility.

The medical profession and legis artis

90. The draft revision of the Criminal Code foresees as an autonomous crime the delinquent violation of the medical legis artis, giving rise to a danger, equally imputable to malice under the general terms of article 13, to the life, physical integrity or health of the patient, a solution which was consecrated in substance in the original version of the 1982 Criminal Code (art. 150, para. 2).

Removal of organs or tissues from dead or living persons

91. The removal or donation of organs or tissues from dead or living persons is regulated by Law No. 12/93, of 22 April 1993. We refer the reader to paragraphs 79 to 90 of the second periodic report (CAT/C/25/Add.10) and further remind the reader that article 10 of the statute "Considers as potential post mortem donors all national citizens or stateless persons or aliens residing in Portugal who have not expressly informed the Ministry of Health that they do not wish to be donors." As worded, the law does not apply to tourists or temporary visitors to the country.

92. On the occasion of the adoption of this legislation, an intense public debate was promoted and undertaken by the media. This debate sought to help explain to the general public the policy adopted and its implications. It was revealed that they were duly understood by certain groups, namely those related to religious movements.

93. It is important to stress that the physician who verifies and certifies the death of a donor is barred from having any direct or indirect involvement in the utilization of the organ in question.

National Council of Ethics and local ethics commissions

94. The National Council of Ethics for the Life Sciences was created under Law No. 14/90 of 9 June. In accordance with article 3 of the statute:

"1. The Council is composed of the President, who is appointed by the Prime Minister, and by the following members:

(a) Seven dignitaries of recognized merit in the area of the social sciences who have demonstrated special interest in ethics issues;

(b) Seven dignitaries of recognized merit in the areas of medicine or biology with implications of an ethical nature;

(c) Six dignitaries of recognized technical quality and moral integrity, bearing in mind the prevailing ethical and religious currents.

2. The dignitaries referred to in line (a), paragraph 1 are nominated by the following entities:

(a) Minister of Planning and Territorial Administration;

(b) Minister of Justice;

(c) Minister of Education;

(d) Deputy Prime Minister and Minister of Youth Affairs;

(e) Board of Deans of Portuguese Universities;

(f) Bar Association;

(g) Commission of Women's Affairs.

3. The dignitaries referred to in line (b), paragraph 1 are nominated by the following:

(a) Minister of Health;

(b) Board of Deans of Portuguese Universities;

(c) Academia das Ciências de Lisboa;

(d) Medical Association;

(e) National Institute of Scientific Investigation;

(f) National Association of Scientific and Technological Investigation;

(g) Supreme Council of Medical Jurisprudence.

4. The dignitaries referred to in line (c), paragraph 1 are nominated according to the proportionality system by the Assembly of the Republic."

95. It is important to note that there are local ethics commissions in roughly 90 per cent of hospitals and in some medical schools.

Mental Health Law

96. The Mental Health Law is currently under revision (Assembly of the Republic Bill No. 121/VIII 12/), which establishes the general policy principles in the area of mental health and regulates the mandatory confinement of persons with psychic anomalies, namely persons suffering from mental illness.

97. This statute establishes the principle of the judiciousness of compulsory confinement, which may only be ordered when it is the only form of guaranteeing treatment of a patient in cases where confinement is based on the level of danger and injury which may be caused to the person in question and should, as often as possible, be substituted by outpatient treatment.

Article 3

98. Article 33 of the Portuguese Constitution, as drawn up in Law No. 1/97, of 18 July, contains the following general provisions on extradition, expulsion and the right of asylum:

"1. Portuguese citizens shall not be extradited or deported from the national territory.

2. Deportation of persons who have entered, or are permanently resident in, the national territory, who have obtained a residence permit, or who have lodged an application for asylum that has not been refused, shall be determined by a judicial authority only; the law shall provide for the expeditious decision of these matters.

3. The extradition of Portuguese citizens from the national territory shall only be permitted, on condition of reciprocity based on an international agreement, in cases of terrorism and international organized crime and provided that the legal order of the requesting State enshrines safeguards of a fair and just trial.

4. No one shall be extradited for political reasons nor for crimes which, under the law of the requesting State carry the death penalty or any other penalty causing irreversible damage to the physical integrity of the person.

5. Extradition in respect of offences punishable, under the law of the requesting State, by deprivation of liberty or detention order for life or an indeterminate term, shall only be permitted on condition of reciprocity based on an international agreement and provided that the requesting State gives an assurance that such sentence or detention order will not be imposed or enforced.

6. Extradition shall be determined by a judicial authority only.

7. The right of asylum is guaranteed to aliens and stateless persons who are persecuted, or under a serious threat of persecution, in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples or the liberty or human rights of individuals.

8. The status of political refugees shall be established by law."

99. In accordance with article 16 of the Portuguese Constitution, the provisions of the Constitution and of laws relating to fundamental rights shall be construed and interpreted in harmony with the Universal Declaration of Human Rights.

100. As such, the principle contained in article 33 of the Portuguese Constitution regarding extradition and deportation should be interpreted and applied by the courts in harmony with the principles espoused by the Universal Declaration.

101. The European Convention on Human Rights is applicable within the Portuguese legal order, although it is noteworthy that this Convention does not guarantee the right of aliens not to be deported or extradited from the territory of one of the contracting States. However, the case law of the organs of the European Convention on Human Rights has provided certain restrictions on the power of States to deport aliens, in cases where there may be grounds for believing that such deportation may infringe upon the rights guaranteed under article 3 of the Convention (prohibition of torture, inhuman or degrading treatment or punishment). This interpretation is valid for Portugal, as a State party to the above-mentioned Convention which falls within the jurisdiction of Strasbourg, thus espousing a principle of the Portuguese Constitution.

102. Apart from this, Portuguese ordinary law espouses the above-mentioned constitutional principle in article 72, paragraph 1 of Decree-Law No. 59/93, of 3 March, which states that "Extradition may not take place to any country where aliens may suffer persecution for reasons which, in accordance with the law, justify granting the right to asylum".

Extradition

103. The legal regime governing extradition is set out in Decree-Law No. 43/91, of 22 January 1991, which establishes the framework for international legal cooperation in criminal matters. This law is currently under revision so as to render it adaptable to the new constitutional regime in the area of extradition resulting, as mentioned in paragraphs 8 to 11 of the present report, from the fourth constitutional revision.

104. In accordance with the constitutional text, extradition is refused, among other reasons, for crimes which, under the law of the requesting State, carry the death penalty or any other penalty causing irreversible damage to the physical integrity of the person or deprivation of liberty or detention order for life or an indeterminate term. However, regarding the latter provision, (deprivation of liberty or detention order for life) extradition is possible whenever the requesting State provides assurances that such sentence will not be enforced, based on the principle of flexibility introduced in article 33 of the Portuguese Constitution by the fourth constitutional revision. This amendment aims at achieving an equilibrium between cooperation in terms of serious crimes and the principles governing the internal legal order, within which life imprisonment was legally abolished in 1886.

105. The above-mentioned constitutional revision now permits the extradition of Portuguese citizens from the national territory, on condition of reciprocity based on an international agreement, in cases of terrorism and international organized crime, and provided that the legal order of the requesting State enshrines safeguards of a fair and just trial.

106. In Portugal, the extradition procedure comprises two phases: the administrative phase and the judicial phase. Whereas the preliminary rejection of the request for extradition may take place during the administrative phase, in accordance with Portuguese constitutional law, the decision to grant the request for extradition falls exclusively within the competence of a judge. The decision to extradite takes place during the judicial phase through a decision which is taken at the end of the judicial procedure and during which process the interested party may be heard and oppose extradition. The judicial decision is final and executory and is sufficient to enable the presentation of the person to the requesting State.

107. A refusal to extradite does not encumber effective cooperation, given that Portuguese law recognizes the principle of aut dedere aut judicare in the legally foreseen cases. In this matter we refer the reader to what has been previously stated in paragraph 10 of the present report.

Deportation

108. The grounds for deportation are set out in Decree-Law No. 59/93, of 3 March, concerning the entry, departure and residence of aliens within the national territory. On this issue, we refer the reader to paragraphs 130 and 131 of the second periodic report (CAT/C/25/Add.10).

109. Deportation may result from a sentencing decision handed down in accordance with criminal legislation (art. 97 of the Criminal Code).

110. Article 34 of Decree-Law No. 15/93 of 22 January, concerning the anti-drugs campaign, provides for deportation for a period not exceeding 10 years, of an alien convicted of a crime covered by this Decree-Law.

111. In accordance with Law No. 15/98 of 26 March, which sets up the new legal regime governing the status of political refugees and the right of asylum, an alien may not be deported to a country where he may be subject to persecution on the grounds warranting his being granted asylum, particularly to a country where torture is practised.

112. Deportation may also be ordered by a judicial authority or by the competent administrative authority, the Aliens and Frontiers Service.

113. Deportation shall be decided on by a judicial authority in the cases where it is an accessory penalty or when the alien who is the subject of the decision has entered or remains within the national territory lawfully and has requested a residence permit or submitted an application for asylum which has not been refused.

114. An alien entering the national territory unlawfully may be detained by any police authority, referred to the Aliens and Frontiers Service and, within a maximum period of 48 hours, brought before the judicial authority with competence to legitimize his detention and decide on the application of enforcement measures. These may be, in addition to the measures listed in the Code of Criminal Procedure, (for example, declaration of identity and residence, mandatory bail, obligation of the alien to present himself periodically before a judicial authority or criminal police body on certain days at specific times, suspension from the performance of duties, the practice of a profession and the enjoyment of rights, prohibition of residence, restricted residence and pre-trial detention), periodic reporting to the Aliens and Frontiers Service and accommodation in temporary centres, as provided for in Decree-Law No. 34/94 of 14 September 1994.

115. The Aliens and Frontiers Service is the authority with competence to initiate deportation proceedings. During the proceedings, the alien must be present at the hearing. The decision to deport falls within the competence of the Aliens and Frontiers Service and may be subject to appeal to the Minister of the Interior and, in terms of his decision, to the Administrative Courts.

Asylum

116. As mentioned in paragraph 111 above, Law No. 15/98 of 26 March, sets up the new legal regime governing the status of refugees and the right of asylum. This law introduced certain new features, such as the possibility for family members of the applicant for asylum to benefit, at the request of the interested party, from a special residence permit, to be granted by the Minister of the Interior. This measure aims at ensuring the reunification of the family and thus provides exemption in these cases, from the requisites of the general regime for the residence of aliens in the national territory. A further legal innovation consists in enabling the Portuguese State to award diplomatic protection for a period not exceeding two years to displaced persons victims of serious armed conflicts which have given rise to large-scale flows of refugees.

Article 4

117. As referred to in paragraphs 142 to 154 of the second periodic report, (CAT/C/25/Add.10) the new Criminal Code has undergone several changes in the articles relative to torture. The draft revision of the Criminal Code mentioned previously, contains an amendment in respect of article 150, whereby that article, concerning operations and medical and surgical treatment, will read as follows:

> "1. Operations and medical treatment which, based on medical knowledge and experience are deemed appropriate and are performed according to the legis artis by a physician or by another legally authorized person, with the intention of preventing, diagnosing, healing or undermining illness, suffering, physical injury or fatigue or mental disturbance, are not considered offences against the physical integrity of the person.
>
> 2. The above-mentioned persons which based on the objectives espoused therein perform operations or medical treatments which violate the rules of the legis artis and thus endanger the life, physical well-being or health of the person are punishable by up to 2 years' imprisonment or by a fine of up to 20 days, if they are not liable to a more serious sentence by virtue of another legal disposition." 13/

118. For further information on this issue we refer the reader to paragraphs 140 to 154 of the second periodic report (CAT/C/25/Add.10).

Article 5

119. Article 5 of the Convention deals with the territorial application of criminal law. In Portugal, this is the subject of articles 4, 5 and 6 of the Criminal Code, as was described in the first and second reports (CAT/C/9/Add.15 and CAT/C/25/Add.10).

120. Without prejudice to what was previously stated on this subject in paragraph 70 of the present report, article 5 is altered by the draft revision of the Criminal Code. In accordance with this proposal, Portuguese criminal law is also applicable to certain types of crimes committed by aliens who are found in Portugal and whose extradition has been requested, when these crimes are extraditable but the extradition may not be granted, for example the crimes of kidnapping and traffic of persons.

Article 6

121. As previously stated in prior reports presented by Portugal, the rules for the detention of persons suspected of committing crimes detailed in the Convention vary depending on whether the person is remanded in custody for the purpose of extradition or remanded in custody for the purpose of criminal prosecution.

Remand in custody for the purpose of extradition

122. Remand in custody for the purpose of extradition is governed by the provisions of a convention or international treaty in force in Portugal and in the absence thereof is based on the principle of reciprocity, under articles 37 and 38 of Decree-Law No. 43/91, of 22 January 1991.

123. We refer the reader to paragraphs 159 to 163 of the second periodic report (CAT/C/25/Add.10).

Remand in custody for the purpose of criminal prosecution

124. Remand in custody for the purpose of criminal prosecution is governed by article 28 of the Constitution and by the Code of Criminal Procedure.

125. The Portuguese Criminal Code establishes a clear distinction between remand in custody and pre-trial detention.

126. Pre-trial detention is a last resort measure of constraint used when there is fear that the person may abscond, destroy or tamper with evidence or disturb public order and peace, and may only be applied when there are strong indications that a crime punishable by a sentence exceeding a maximum of three years' imprisonment has been wilfully committed, or if the detainee has remained in the national territory on an irregular basis or if deportation or extradition proceedings have been instituted against him.

127. Remand in custody is aimed at ensuring that the detainee appears immediately before the judge so that a procedural act can be drawn up or summary proceedings initiated. In such case, the appearance before a judge may be designed to impose an enforcement measure such as pre-trial detention.

128. Anyone against whom an accusation is presented or against whom criminal proceedings are filed is considered an accused. An accused person is conferred certain rights and duties throughout the entire process, among them: the right to be present at proceedings which directly concern him; to be heard by the court or the examining magistrate whenever they must render a decision which affects him personally; not to be forced to reply to questions from participants in the trial in respect of the acts ascribed to him or in respect of the content of statements already made; to select his own counsel or request the court to appoint one, to be assisted by his counsel in all proceedings in which he participates and, when in detention, to be allowed to communicate with his counsel, including in private; to take part in the inquiry and in the pre-trial investigation, submit evidence and avail himself of such procedures as he may deem necessary; to be informed of his rights by the judicial authority or by the criminal police body before which he is required to appear; and to appeal, in accordance with the law, against unfavourable decisions (art. 61 of the Code of Criminal Procedure).

129. The law foresees certain cases in which the presence of counsel is mandatory. The presence of counsel is always mandatory, in accordance with article 64 of the Code of Criminal Procedure, at the initial judicial questioning of the detainee, at the pre-trial examination and at the hearing except in cases where imprisonment or detainment are not applicable, in any

procedural act where the accused is deaf, dumb, illiterate, ignorant of the Portuguese language, under the age of 21, or there are any questions regarding unimputability or reduced liability in terms of remedy or extraordinary remedy and in cases of statements for the record.

Remand in custody of persons caught in flagrante delicto

130. Provision for the remand in custody of persons caught in flagrante delicto is set out in articles 254, 255 and 257 of the Code of Criminal Procedure and is specified in the second periodic report (CAT/C/25/Add.10, paras. 165-170).

131. However, the draft proposal for revision of the Code of Criminal Procedure contains an alteration to article 254 which will read as follows:

> "Remand in custody as referred to in the following articles takes place:
>
> (a) So that within a maximum period of 48 hours following the arrest, the detainee must be brought for summary proceedings or before a competent examining magistrate for initial judicial questioning or application or execution of enforcement measures; or
>
> (b) To ensure that the detainee is immediately brought before the judicial authority so that a procedural act can be drawn up. In cases where this may prove impossible, the detainee must appear before a judge within the shortest period of time not exceeding 24 hours following the arrest.
>
> 2. The accused who is not caught in flagrante delicto must always be brought before a judge in accordance with the provisions of article 141 for the application or execution of pre-trial detention."

Pre-trial detention

132. Pre-trial detention is provided for under article 28 of the Constitution of the Portuguese Republic and article 215 of the Code of Criminal Procedure and is outlined in paragraphs 171 to 176 of the second periodic report (CAT/C/25/Add.10).

133. The draft revision of the Code of Criminal Procedure proposes a change 14/ to paragraphs 2 and 3 of article 215 regarding the cases in which the legal time limits set out for pre-trial detention can be extended. This change however merely increases the range of crimes which may be encompassed by an extension of the legal time limits governing pre-trial detention, without however increasing the maximum limit. The maximum time limit remains four years, applicable only to certain crimes and in situations where they prove of particular complexity. The legal motives for the extension of the standard time limits are extremely restricted.

134. In general, pre-trial detention ends whenever the following periods have elapsed from its beginning: six months without charges having been filed against the accused; 10 months without pre-trial examination, a decision

having been handed down regarding committal for trial; 18 months without a first instance sentence having been handed down; two years without a sentence of res judicata being handed down.

Remand in custody for purposes of identification

135. Law No. 5/95, of 21 February, establishes the obligation of possession of a document of identification, in the absence of which or refusal to present such a document, an identification procedure may take place consisting of the escort of the person to be identified to the nearest police post, where he will remain for the period of time strictly necessary for purposes of identification, which may not exceed two hours.

Other enforcement measures

136. According to the principle of legality set out in article 191 of the Code of Criminal Procedure, "the freedom of individuals may only be restricted, whether totally or partially, on the basis of procedural requirements, by enforcement measures or bail provided for by the law".

137. Article 193, paragraph 1, stipulates that "The enforcement measures or the bail must be in keeping with the requirements of prevention in the case in question and proportional to the seriousness of the crime and the penalties foreseen to be applicable". The execution of enforcement measures shall not affect the exercise of fundamental rights and shall require that the person be duly charged.

138. We refer the reader to the second periodic report (CAT/C/25/Add.10), regarding the statute of the person charged (para. 180) and the conditions for the application or revocation of enforcement measures (paras. 181-184).

Article 7

139. Under article 31 of Decree-Law No. 43/91, of 22 January, if extradition is refused in the cases provided for therein, the requesting State is called upon to furnish all the elements necessary for the institution or continuation of criminal proceedings against the person being prosecuted for the offence which constitutes the basis for the request.

140. Consequently, if Portugal does not allow the extradition, it is bound to bring criminal proceedings against the person in question, in accordance with the principle of aut dedere aut judicare.

141. In such a case, the rights and procedural safeguards provided for under the Constitution of the Portuguese Republic and the law are fully respected. Concerning this subject, we recall what was stated in paragraph 120 regarding the changes to article 5 of the Criminal Code.

Article 8

142. Under this article of the Convention, the offences referred to in article 4 must be included in any extradition treaty concluded between States.

143. As previously stated, in Portugal, extradition is governed by article 33 of the Constitution and by Decree-Law No. 43/91, of 22 January (law governing international cooperation in criminal matters), which is applied in the absence of an international treaty on the subject.

144. Relative to Decree-Law No. 43/91, of 22 January, we refer the reader to paragraphs 197 to 199 of the second periodic report. It should be borne in mind that the Decree-Law is at present under legislative review, following the fourth constitutional revision and the need to adapt internal legislation to the most recently adopted conventional instruments, namely those within the framework of the Council of Europe.

Article 9

145. International mutual judicial assistance in criminal matters is governed (in ancillary terms) by Decree-Law No. 43/91, of 22 January.

146. As mentioned above in paragraphs 23 and 24, Portugal is a party to many international conventions on the subject, including the 1959 European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto and has concluded bilateral treaties on this matter with several countries, namely Australia, Brazil and Portuguese-speaking African countries.

Article 10

147. Training, information and the development of awareness regarding torture and other cruel, inhuman or degrading treatment or punishment is one of the most important means of ensuring the effective prevention of such practices.

148. Regarding the means and forms of organization of the information, we refer the reader to paragraphs 205 to 207 of the second periodic report (CAT/C/25/Add.10).

Police officials

149. Since 1989, the curriculum of the training courses for the police forces has included human rights issues, special attention being given to the need to treat detainees (as well as suspects) humanely.

150. The School of Advanced Police Studies, a university-level academy provides advanced training courses for senior officers of the Public Security Police (PSP) in areas such as command and management. Included in the curricula of these courses are subjects such as legal sciences, social sciences and professional ethics, in which human rights and the safeguard of fundamental rights and freedoms play a primary role.

151. PSP has another training institution, the Police Academy of Torres Novas, which provides basic and additional training to rank and file police officers and which organizes courses and seminars in ethics, intended to increase awareness of humanist principles and values.

152. The Republican National Guard (GNR) trains its officers at the Military Academy, which has created a special university-level course in which socio-political sciences and the law play a leading role.

153. GNR has another training institution, focusing on the moral, cultural, physical, military and technical-professional training of rank and file officers, where various training courses on personal improvement are given.

154. The training of the Judicial Police (PJ) falls under the responsibility of the National Institute of Police and Criminal Science; human rights play a significant role and are present at all levels of training.

155. The technical-practical training of private security personnel also includes the subject of human rights.

156. The training of prison warders includes issues such as personal and social development, justice and discipline, prison theory and practice, institutional security, drugs and the prison system, and interpersonal relations. The course content has been enriched with the introduction of the study of the protection of human rights, as well as the study of various international conventions and of the functioning of the Committee against Torture, the European Committee for the Prevention of Torture and the European Commission on Human Rights.

157. In 1996, the Office of Documentation and Comparative Law of the Office of the Prosecutor-General, in conjunction with the Directorate-General of Prison Services and the Institute for Social Integration and with the support of the Ministry of Justice, translated into Portuguese the manual Making Standards Work published by the non-governmental organisation Penal Reform International, whose aim is to contribute to the improvement of prison conditions and to promote fairer and more humane treatment of delinquents. This activity was undertaken within the framework of promoting the programme of crime prevention and criminal justice of the United Nations.

158. Recently, the media has publicized an initiative of the Ministry of the Interior, of a film entitled, "Fundamental rights, standards of action", designed to serve as a complementary source of training for the security forces and which attempts to demonstrate the procedures such forces should adopt in terms of ensuring respect for the fundamental rights of the citizen, in both everyday and hazardous situations.

Article 11

Prison system

159. The government programme in the area of justice established as a priority the creation of an urgent programme of action for the prison system, with particular emphasis on the system of execution of sentences and enforcement measures.

160. Consequently, the Programme of Action for the Prison System, which comprises a series of measures aimed at improving the conditions of detention, was approved by Resolution No. 62/96, of 29 April, of the Council of Ministers.

161. The Programme of Action provides for the strengthening of conditions relating to the application of the system of sanctions which do not involve deprivation of liberty, the revision of the Criminal Procedure Code and the improvement of the prison system.

162. In terms of strengthening the conditions relating to the application of a system of sanctions which do not involve the deprivation of liberty, Decree-Law No. 375/97, of 24 December 1997, establishes procedures aimed at enhancing and promoting the organization of practical conditions for the application and execution of community work. This penal institute endeavours to censure criminal activity though positive work actions on behalf of the community and symbolic community reparation, promoting the social utility of work rendered and the social integration of the delinquent person. The person involved in rendering such services is as such and in accordance with the above-mentioned statute, a person who renders unremunerated services to the State or other public or private entities, as a result of a legal conviction determining such services.

163. A working group has been set up within the Ministry of Justice to undertake a study on the introduction in Portugal of electronic control measures.

164. One of the main objectives in revising the Code of Criminal Procedure is to advance solutions designed to expedite criminal procedure and thus eliminate successive postponements of certain judicial acts, as well as to introduce more efficient procedures for the handling of minor crimes and the revision of the system of appeal.

165. The Programme of Action also comprises legislative and administrative measures to address the urgent need for intervention in the prison system.

166. The following legislative measures have been adopted to date:

Law No. 36/96, of 29 August 1996, which allows for the release of convicted detainees suffering from serious and irreversible illness in a terminal phase;

Decree-Law No. 10/97, of 14 January 1997, which reviews the law governing the organization of the Directorate-General of Prison Services and establishes adequate structures to face the problems posed by the present prison population;

Decree-Law No. 46/96, of 14 May 1996, which established an additional regime for the realization of works, for the acquisition of goods and services and for personnel recruitment for the Directorate-General of Prison Services;

The development of various prison establishments, namely the prisons of Castelo Branco and Monção, the special prison of Viseu, for the detention of young adult males, and the prison of Carregueira, (established by Decree Law No. 39/96 of 6 May 1996, Administrative Rule No. 34/97 of 9 January 1997, Decree Law No. 190/97 of 29 July 1997, and Decree-Law No. 273/97, of 8 October, respectively).

The correction of remuneration disparities of prison warders, through Decree-Law No. 100/96 of 23 July.

167. In terms of administrative measures, among various protocols with several public administration departments special reference should be made to the protocol with the Ministry of Health regarding the treatment of drug addicted detainees, aimed at controlled abstinence, through drug testing and the free distribution of methadone.

168. Following the broadcasting of information by the media, a global project is under way for the establishment of health units, hospital wards, locations for inmates with infectious and contagious illnesses, and "drug free zones". The first Drug Free Village has already been approved and is expected to be established within the Sintra prison during the first semester of 1999.

169. So as to address the problem of excess prison population, two new prisons are to be constructed, one in the south and the other in the central part of the country, as well as a new female prison establishment.

170. The Governmental Programme Options for 1998 established two priorities in the area of justice:

The continuation of the efforts undertaken to improve the conditions surrounding the execution of sentences involving the deprivation of liberty, through an increase in the holding capacity of the prison system, the establishment of conditions which favour the social rehabilitation of inmates and the improvement of the material conditions of certain establishments (by means of Order No. 20/MJ/96, of 10 February 1996, establishing the Commission for the Reform of the System of Execution of Sentences and Enforcement Measures and Order No. 174/97, of 30 June 1997, which establishes a working group to develop and propose general guidelines for a work model for inmate occupational purposes).

The establishment of conditions which will allow the application of non-confinement measures, such as community work.

171. Following the recommendations of the Committee for the Prevention of Torture which has already undertaken two visits to Portugal and the reports of the Inspectorate-General of the Ministry of the Interior, several detention places have been closed down owing to internal conditions, as referred to in paragraph 52 above.

Ombudsman

172. The office of the Provedor de Justiça (mediator or Ombudsman) is an independent institution whose primary function is the defence and promotion of the rights, freedoms, safeguards and legitimate interests of the citizens (see paragraphs 101 to 105 of the core document (HRI/CORE/1/Add.20), and paragraphs 228 to 236 of the second periodic report (CAT/C/25/Add.10)).

173. We merely add that the Provedor de Justiça is elected by a two-thirds majority of the Members of Parliament to serve a four-year renewable mandate and may not be removed from office before the end of his mandate, except at his own request.

174. The Provedor is completely independent of the political establishment and acts on his own initiative or in response to complaints submitted to him by private individuals.

175. The Provedor has no decision-making powers, but may address recommendations deemed necessary for the prevention or remedy of injustice to any entity within the Public Administration.

176. The Provedoria de Justiça carries out inspection tours to prison establishments and drafts reports containing relevant recommendations to the competent authorities.

Right of petition

177. Under article 52 of the Constitution, all citizens may, individually or collectively, submit petitions, representations, claims or complaints for the purpose of defending their rights, the Constitution, the law or the public interest, to the organs of supreme authority of the State or to any other authority.

178. Law No. 43/90, of 10 August 1990, as amended by Law No. 6/93, of 1 March 1993, regulates and safeguards the exercise of the right of petition through the submission to the organs of supreme authority of the State, or any other authority, of petitions, representations, claims or complaints.

179. The petition may also be submitted to the Commission on Rights, Freedoms and Safeguards of the Assembly of the Republic, which is empowered to conduct the appropriate inquiries and refer them to the competent authorities.

Provisions on the custody and treatment of arrested, detained or imprisoned persons

180. With regard to the provisions on the custody and treatment of arrested, detained or imprisoned persons, set out in the Prison Act (Decree-Law No. 265/79, of 1 August 1979, as amended by Decree Laws No. 49/80, of 22 March 1980, and No. 414/85, of 18 October 1985, we refer the reader to paragraphs 242 to 246 of the second periodic report (CAT/C/25/Add.10).

Pre-trial detention

181. Pre-trial detention is governed by the special rules of articles 209 and following of the Prison Act (Decree-Law No. 265/79, of 1 August 1979, as amended by Decree Laws No. 49/80, of 22 March 1980, and No. 414/85, of 18 October 1985).

182. Regarding the contents of this rule we refer the reader to paragraphs 247 to 253 of the Second Periodic Report (CAT/C/25/Add.10).

Special security measures

183. Article 111 of the Prison Act prescribes that special security measures may only be applied to detainees if their conduct or psychological state suggests that they may try to commit acts of violence against themselves, other individuals or property.

184. The authorization, responsibility for application and maximum period of duration of such measures, as well as the rights of detainees subject to special security measures are specified in paragraphs 254 to 261 of the second periodic report (CAT/C/25/Add.10).

185. The governor of the institution is responsible for authorizing the application of the special security cell confinement measure. The maximum period during which a detainee may be held in uninterrupted isolation in a special security cell is one month. However, whenever the governor of the institution determines the application of this measure for a period exceeding 15 consecutive days, the decision must be submitted to the approval of the Directorate-General of Prison Services.

186. All detainees placed in a special security cell are placed under medical supervision. The institution's physician must report to the governor on the detainee's physical and mental state of health, and, if necessary, on the need to terminate the punishment. Experience has demonstrated that the prison services usually follow the recommendations of the attending physician.

187. In accordance with a memorandum of the Directorate-General of Prison Services, detainees are entitled to remain outdoors for at least one hour per day. This memorandum was elaborated following a recommendation of the European Committee for the Prevention of Torture of the Council of Europe.

188. The detainees placed under the special security regime have the same safeguards as other detainees against the use of abusive measures. These measures are established by law and comprise the right to submit a complaint to several entities, such as the director of the institution, the inspectors, the Directorate-General, the sentencing judge, the Ombudsman, the Minister of Justice and the President of the Assembly of the Republic.

189. The Prison Act also expressly provides for the right of appeal to the Court in Strasbourg.

190. The exchange of communications between the detainees and the entities referred to above is strictly confidential.

The use of force

191. The provisions regarding the use of force are set out in articles 196 and following, of the Code of Criminal Procedure and are specified and described in paragraphs 262 to 265 of the second periodic report (CAT/C/25/Add.10).

192. Article 193 of the Code of Criminal Procedure establishes proportionality as the rule in all matters pertaining to the use of force, which must be limited to the time period which is strictly necessary. Articles 212 and following of the Code of Criminal Procedure establish that these measures may be revoked, altered or terminated in the course of the periodic evaluation process to which they are subject. In addition, it is important to note that in terms of safeguards, the possibility is provided of appealing any decision to apply or maintain these measures. This appeal shall be judged within a maximum period of 30 days after receipt of the appellate records, pursuant to article 219 of the Code of Criminal Procedure.

193. Recourse to physical force always requires a written inquiry into the circumstances determining its application.

194. In the case of conflict between the rules and guidelines stemming from the prison and police hierarchies and the Physicians' Code of Ethics, the latter shall prevail over the former, which may even, in certain cases, be totally ignored. By way of example, if there is an order for the forced feeding of a detainee on a hunger strike, the physician concerned may refuse to abide by such an order, without incurring any criminal or disciplinary legal sanctions.

Aliens

195. Decree-Law No. 59/93, of 3 March 1993, on the entry, residence, exit and expulsion of aliens from national territory, calls for the establishment of temporary settlement centres to house aliens.

196. The procedure for receiving aliens or stateless persons in the temporary settlement centres is set forth in Law No. 34/94, of 14 September 1994, which calls for the additional application to aliens, settled in them for reasons of security, of the special rules for pre-trial detention provided for in the Prison Act.

Article 12

197. Under article 12 of the Convention, each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

The right to lodge a complaint

198. Any victim of ill-treatment, abuse of authority or of the use of excessive force is entitled to lodge a complaint, which must necessarily be accepted.

199. The complaint may be lodged with either the administrative or judicial authorities, or simultaneously with both. The acts in question are dealt with through internal police disciplinary measures, as well as administrative inquiries ordered by the internal hierarchy of the bodies concerned, or through criminal proceedings before the competent courts.

200. The decision to institute disciplinary proceedings lies with the hierarchy of the security forces and relevant the Ministry. The possibility of appealing the decisions of these authorities to the competent administrative courts is, however, always available.

201. For details of the disciplinary proceedings, we refer the reader to paragraphs 272 to 285 of the Second Periodic Report (CAT/C/25/Add.10).

202. The following table provides statistics, obtained from the Office of the Attorney General, on alleged crimes perpetrated by police officers. (The data is current as at 31 March 1998.)

Types of offences (criminal acts) while on duty for which complaints were lodged against police officers

Type of offence	1991	1992	1993	1994	1995	1996	1997	Total
Voluntary physical offences	111	180	255	206	175	159	91	1 177
Abuse of powers	41	46	53	70	59	65	17	351
Threats	16	24	31	26	20	23	5	145
Illegal arrest	15	19	31	19	29	10	7	130
Injury	24	40	49	35	36	17	11	212
Murder (consummated/attempted)	1	0	3	3	1	2	0	10
Involuntary manslaughter	1	3	2	8	3	3	1	21
Forced deposition	8	10	16	15	10	1	1	61
Use of force	5	6	14	7	12	9	2	55
Wrongful initiation of proceedings/failure to initiate proceedings	6	10	9	8	12	2	2	49
Corruption	3	6	12	7	15	5	6	54
Other crimes	54	82	107	77	77	70	60	527
Total	285	426	582	481	449	366	203	2 792

Note: The numbers registered pertain to criminal acts that have been denounced and not to crimes actually committed, the occurrrence of which can only be confirmed or not, after investigation and trial.

Proceedings - while on duty

Proceedings	1991	1992	1993	1994	1995	1996	1997	Total
1. Proceedings instituted	192	303	424	336	330	280	179	2 044
2. Accusations	58	82	90	70	47	43	14	404
3. Amnesties	2	5	15	6	0	0	1	29
4. Retracted complaints	5	8	19	15	15	16	5	93
5. Filed for other reasons	28	53	66	45	57	28	18	295
6. Total filed (3+4+5)	35	76	100	66	72	44	24	417
7. Insufficient evidence	76	101	162	125	123	84	31	702
8. Referred to military justice	18	22	28	16	12	8	0	104
9. Total concluded (2+6+7+8)	187	281	380	277	254	179	69	1 162
10. Pending investigation	5	22	44	59	76	101	110	417
11. With conviction	15	15	22	9	6	1	1	69
12. With acquittal	17	9	8	8	3	3	0	48
13. Trial pending	18	45	53	46	33	37	13	245
14. Concluded before trial	8	13	7	7	5	2	0	42

Officers charge by police organs - while on duty

Officers charged (accusation)	1991	1992	1993	1994	1995	1996	1997	Total
Public Security Police	248	338	473	400	383	370	209	2 421
National Republican Guard	73	102	124	126	113	111	44	693
Judicial Police	23	39	52	39	46	25	15	239
Customs Police	1	13	22	4	1	0	1	42
Directorate General for Economic Inspections	1	1	0	0	0	0	0	2
Prison guards	5	0	7	11	14	11	8	56
Municipal Police	0	1	2	1	0	2	0	6
Forest Rangers	0	1	1	5	1	0	5	13
Total for the year	351	495	681	586	558	519	282	3 472

Article 13

203. Article 13 of the Convention stipulates that each State Party shall ensure that any individual who alleges he has been subjected to torture has the right to complain to the competent authorities, which are required to examine the complaint promptly and impartially.

204. Article 21 of the Constitution stipulates that "Everyone has the right to refuse to comply with an order that infringes his or her rights, freedoms or guarantees and to resist by force any form of aggression when recourse to a public authority is impossible."

Access to the law and the courts

205. Decree-Law No. 387-B/87 of 29 December 1987 defines the conditions for access to the law and the courts, in order to ensure that everyone, regardless of economic, social or cultural status, is allowed to assert or defend his or her rights.

206. These goals are achieved by means of actions and mechanisms designed to provide legal information and protection. Legal protection takes the form of legal counselling and legal aid.

207. The rules governing legal aid are set out in Decree-Law No. 387-B/87, of 29 December 1987, Decree-Law No. 391/88, of 26 October 1988, as amended by Law No. 133/96 of 13 August 1996 and Law No. 46/96 of 3 September 1996.

208. Recently, Law No. 46/96, of 3 September 1996 has extended legal aid to non-resident aliens on condition of reciprocity.

209. Legal aid includes total or partial exemption from court and lawyers fees and/or free consultation in free legal counselling offices, established for this purpose.

210. So as to facilitate the functioning of the pro-bono legal counselling system, article 19 of Decree-Law No. 387-B/87, of 29 December 1987 stipulates that "proof of the applicant's economic hardship can be accomplished by any suitable means".

211. In keeping with the avowed concern of the State to ensure every citizen equal access to the law, the Bar Association imposes upon its professional members the obligation of participating in this objective.

212. The Statute of the Bar Association, provided for in Decree-Law No. 84/84, of 16 March 1984, as amended by Decree-Law No. 119/86, of 28 May 1986 and Law No. 33/94 of 6 September 1994, stipulates as one of the duties of the lawyer, the provision of pro bono services, or free legal counselling, for which he will later be paid by the State. Article 85, paragraph 1 states: "A lawyer should not, without justifiable motives, refuse free legal counselling."

213. Pursuant to article 11, paragraph 1 of Decree-Law No. 391/88, of 26 October 1988, which governs legal aid, the fees paid to lawyers and

solicitors legal aid services, as well as justifiable expenses which they have incurred, will be paid from the court's general expense account.

214. In order to guarantee economically challenged citizens the same legal counselling, on a free basis, as is available to more economically endowed citizens, 11 legal counselling offices were established by Decree-Law No. 387-B/87 of 29 December 1987.

The right to lodge a complaint before public authorities and entities

215. Recourse to the Ombudsman (Provedor da Justiça) is provided for and safeguarded under the conditions mentioned in paragraphs 172 to 176 of the present report.

216. The right of detainees to lodge a complaint is governed by Decree-Law No. 265/79, of 1 August 1979, referred to in paragraph 180 above.

Protection of judges, witnesses and experts

217. The Portuguese legal system makes no specific provision for the protection of witnesses, experts, judges, prosecutors, judicial officials and jurors against intimidation practices which may pose a threat to their life or physical integrity or that of their closest relatives. However, studies are currently under way with a view to the preparation of legislation in this area.

218. However, the absence of specific legal provisions for the protection of such persons does not imply that practical measures may not be adopted in this regard at the administrative level, based on the particular circumstances of each case and the protection of fundamental rights, freedoms and safeguards.

219. Decree-Law No. 43/91, of 22 January 1991, which authorizes international co-operation in criminal matters is described in greater detail in paragraphs 298 and 299 of the second periodic report (CAT/C/25/Add.10), and is, as previously mentioned in the present report, currently being revised.

Article 14

220. Portuguese law provides several means by which compensation may be obtained. The general rule is contained in article 483, paragraph 1 of the Civil Code, which stipulates that, "anyone who wilfully or negligently violates the rights of another person or any legal norm for the protection of the rights of others, must pay compensation for damage resulting from the violation".

The liability of the authorities

221. Article 22 of the Constitution, which has not been amended, is described in paragraph 301 of the second periodic report (CAT/C/25/Add.10). This article reads as follows:

> "The State and other public bodies shall be jointly and severally liable under the civil law, with the members of their organs, their officials

and other personnel, for acts or omissions in the performance of their functions, or caused by the performance of their functions, which result in contravention of rights, freedoms or guarantees or in damage to another person."

Civil liability deriving from a crime

222. Portuguese criminal law and criminal procedure law provide for civil liability deriving from a crime (art. 129 of the Criminal Code). The civil liability deriving from a crime provided for in articles 71 and 377 of the Code of Criminal Procedure and the system of indemnity derived therefrom are described respectively in paragraphs 303 and 304 and paragraphs 305 to 311 of the second periodic report (CAT/C/25/Add.10). As stated in paragraph 20 above, the proposed bill on the revision of the Code of Criminal Procedure introduces the possibility for the court to award damages with the effect of criminal conviction, for losses suffered, when special considerations for the protection of the victim so require.

Victims of violent crime

223. In conformity with article 130 of the Criminal Code, Decree-Law No. 423/91 of 30 October 1991, determines the legal regime for the protection of victims of violent crime.

224. This statute was amended by Law No. 10/96 of 23 March 1996, but only as applicable to acts committed before the entry into force of Decree-Law No. 400/82, of 23 September 1982 to establish the time limit governing application for compensation in these cases.

225. The system of compensation for victims of violent crimes is described in paragraphs 54 to 56 above and in paragraphs 313 to 327 of the second periodic report (CAT/C/25/Add.10).

226. The statistics of the Commission for Compensation of the Victims of Violent Crimes on provisions and compensation awarded in 1996 15/, are the following:

Provisions awarded

Cases in which provisions were awarded	2
Highest provision awarded	Esc 500,000
Lowest provision awarded	Esc 200,000

Compensation awarded

Cases in which compensation was awarded	25
Number of petitioners who benefited	31
Highest award	Esc 4,000,000
Lowest award	Esc 150,000
Total awards	Esc.62,471,000
Average award	Esc 2,498,840

Compensation of civil and military officials, jurors, mayors and women

227. Regarding this matter, we refer the reader to paragraphs 329 to 333 of the second periodic report (CAT/C/25/Add.10).

Article 15

228. Article 32, paragraph 8 of the Constitution stipulates: "Evidence is of no effect if it is obtained by torture, force, infringement of the physical or moral integrity of the individual, or wrongful interference with private life, the home, correspondence or telecommunications."

229. Further to the constitutional guarantees, article 126 of the Code of Criminal Procedure stipulates that any evidence obtained through torture, coercion or violation of the physical or moral integrity of an individual is null and void and may in no case be used.

230. The above-mentioned article, which has not been amended, is discussed in paragraphs 335 to 337 of the second periodic report, (CAT/C/25/Add.10).

231. Under article 140 of the Criminal Code an accused person, even when detained, must be allowed freedom of movement, except if circumstances require otherwise. This measure, which expresses the constitutional principles regarding personal dignity and the proportionality of measures for the deprivation or restriction of freedom, will further contribute to ensuring the protection of individuals against acts of torture.

Article 16

232. As previously mentioned not only torture, but cruel, degrading or inhuman treatment or punishment are criminalized, pursuant to the Convention.

233. The cases referred to in the present report often constitute violations of physical integrity, which are punishable under articles 243 and 244 of the new Criminal Code following the 1995 revision.

234. As described in the present Report and in those submitted previously, the Portuguese legal system effectively prohibits any act that might constitute cruel, inhuman or degrading treatment.

Notes

1/ Bill No. 160/VII amending the Criminal Code has recently been approved.

2/ Bill No. 157/VII amending the Penal Procedure Code was approved in June of 1998.

3/ Although it did not have the necessary number of ratifications to enter into force, it is applicable in the bilateral relations of member States which have issued a declaration to this effect at the moment of ratification.

4/ Article 243 of the Criminal Code:

"1. Whosoever, charged with the function of prevention, follow-up, investigation or knowledge of criminal infractions, misdemeanors or disciplinary infractions, the application of related sanctions, or the protection, guard or supervision of a detainee or prisoner, tortures or subjects such persons to torture, cruel, inhuman or degrading treatment for the purposes of:

(a) Obtaining from this or any other person, a confession, statement, declaration or information;

(b) Punishment for an act committed, or allegedly committed by that or any other person; or

(c) Intimidation of that or any other person

shall be punished with a prison sentence of from one to five years, if a heavier sentence is not applicable by virtue of another legal provision.

2. Any person who on his own initiative or following orders from a superior, uses the function referred to in the previous paragraph, to carry out any of the acts described therein, shall be liable to the same sentence.

3. Torture, or cruel, degrading or inhuman treatment are defined as acts inflicting intense physical or psychological suffering or severe physical or psychological fatigue or involving the use of chemical substances, drugs or other natural or artificial means, intended to impair the victim's ability to make decisions or freely express his will.

4. The provisions of the preceding paragraph do not include the sufferings inherent in the execution of the sanctions foreseen under paragraph 1 or engendered by it, or any legal detention or restraining measures."

5/ Bill No. 113/VII was approved in July of 1998.

6/ This Bill was superseded by Law No. 16/98, of 8 April.

7/ Article 27 of the Portuguese Constitution reads:

"1. Everyone has the right to liberty and security.

2. No one shall be deprived of his or her liberty, in whole or in part, unless as the consequence of a sentence of imprisonment imposed by a court convicting him or her of an offence punishable by law, or as the consequence of a security measure judicially ordered.

3. This guarantee does not apply to the following cases where a person is deprived of his or her liberty, for a period and under conditions laid down by law:

(a) Detention in flagrante delicto;

(b) Detention or remand in custody where there is strong evidence that the person has committed a serious crime punishable by imprisonment for more than three years;

(c) Arrest, detention or other coercive measure subject to judicial control of a person who has unlawfully entered or remained in the national territory or against whom extradition or deportation proceedings have been instituted;

(d) Imprisonment for reasons of discipline of military personnel, to whom a right to appeal to the competent court is guaranteed;

(e) Detention of a minor in an appropriate institution for the purposes of protection, support or education, on the order of a competent court of law;

(f) Detention under a court order for non-compliance with a court order or to ensure appearance before the competent judicial authority;

(g) Detention of suspects, for identification purposes, in such cases and periods of time as are strictly necessary;

(h) Committal of a person suffering from a mental disorder to an appropriate therapeutic institution ordered, or confirmed, by a competent judicial authority.

4. Everyone who is deprived of liberty shall be informed, promptly and in a manner that he or she understands, of the reasons for the arrest or detention, and of his or her rights.

5. Any deprivation of liberty in violation of the provisions of this Constitution or the law shall place the State under the duty to compensate the person aggrieved as laid down by the law."

8/ Services headed by a Governador Civil, nominated by the Government as its representative at the district level.

9/ Source: Justice files, September 1997, Bureau of Studies and Planning of the Ministry of Justice.

10/ By Order of the Secretary of State for Justice.

11/ Until 30 June.

12/ This Bill led to the adoption of Law No. 36/98, of 24 July.

13/ This paragraph is underlined because it has been included in the draft revision of the Criminal Code.

14/ The new revision of article 215 of the Code of Criminal Procedure will be the following:

Article 215

(Maximum time limits for pre-trial detention)

1. Pre-trial detention shall end after the following time periods have elapsed from its commencement:

(a) 6 months, if no charge has been filed against the accused;

(b) 10 months, if, after the pre-trial examination has taken place, no decision has been handed down concerning committal for trial;

(c) 18 months when no first instance sentence has been handed down;

(d) 2 years, when no sentence with the force of res judicata has been handed down.

2. The timeframes referred to in the previous paragraphs are increased respectively, to 8 months, 1 year, 2 years and 30 months, in cases of terrorism, violent or highly organized crime, or when effected for a crime punishable with a prison term of over 8 years, or for a crime:

(a) Provided for in articles 299, 312 No. 1, 315 No. 2, 318 No. 1, 319, 326, 331, or 333 No. 1, of the Criminal Code;

(b) Of car theft or forgery of documents therein related or elements of identification of vehicles;

(c) Counterfeit of money, credit instruments, notes, stamps and like instruments, or of economic participation in a transaction;

(d) Fraud, fraudulent insolvency, harmful administration of the public or cooperative sector, forgery, embezzlement or corrupt economic participation in a transaction;

(e) Laundering of monies, goods or products of crime;

(f) Fraud in the attainment or misdirection of subsidy, grant or credit;

(g) Encompassed by the convention on the safety of air and maritime travel.

3. The time limits referred to in paragraph 1 are increased to 12, 16 months, 3 and 4 years respectively, when the procedure is for one of the crimes referred to in the previous paragraph and reveals itself of particular complexity, owing to the number of defendants or victims or the highly organized nature of the crime.

4. The time limits referred to in paragraph 1 (c) and (d), as well as the corresponding items referred to in paragraphs 2 and 3, are increased by six months if there is an appeal to the Constitutional Court or if the criminal process has been suspended for trial in another court of preliminary ruling.

15/ Source: Justice files, September 1997, Bureau of Studies and Planning of the Ministry of Justice.